

COUNTY OF LOS ANGELES v. VILLANUEVA

Case Number: 19STCP00630

Hearing Date: August 16, 2019

FILED
Superior Court of California
County of Los Angeles

AUG 19 2019

Sherri R. Carter, Executive Officer/Clerk
By *Fernando Becerra, Jr.*, Deputy
Fernando Becerra, Jr.

ORDER GRANTING REQUEST FOR A PRELIMINARY INJUNCTION

This matter is before the court on the request of Petitioner, County of Los Angeles, for a preliminary injunction. Petitioner seeks an order that:

1. Pending the trial of this action or further order of this court, Respondent, Caren Carl Mandoyan, cease to hold himself out as a Los Angeles County Deputy Sheriff;
2. Mandoyan relinquish all County property in his possession, including any Los Angeles County Sheriff's Department-issued uniform, badge and weapon; and
3. Respondent, Los Angeles County Sheriff Alex Villanueva, cease to recognize or hold Mandoyan out as a Deputy Sheriff or a County employee, and direct Respondent Los Angeles County Sheriff's Department (Department) to act in accordance herewith.

The Sheriff and Department oppose the motion. Mandoyan also opposes the motion.

Petitioner's motion is GRANTED.

LEGAL STANDARD

The standards governing a preliminary injunction are well known. "[A] court will deny a preliminary injunction unless there is a reasonable probability that the plaintiff will be successful on the merits, but the granting of a preliminary injunction does not amount to an adjudication of the merits." (*Beehan v. Lido Isle Community Assn.* (1977) 70 Cal.App.3d 858, 866.) "The function of a preliminary injunction is the preservation of the status quo until a final determination of the merits." (*Ibid.*)

As the parties recognize, "Trial courts traditionally consider and weigh two factors in determining whether to issue a preliminary injunction. They are (1) how likely it is that the moving party will prevail on the merits, and (2) the relative harm the parties will suffer in the interim due to the issuance or nonissuance of the injunction." (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.) "[T]he greater the . . . showing on one, the less must be shown on the other to support an injunction." (*Ibid.* [quoting *Butt v. State of California*, (1992) 4 Cal.4th 668, 678].) The burden of proof is on the plaintiff as the moving party "to show all elements necessary to support issuance of a preliminary injunction." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. (*See e.g., Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150.) A plaintiff seeking injunctive relief must also show the absence of an adequate damages remedy at law. (Code Civ. Proc. § 526, subd. (a)(4).)

Where a preliminary injunction is granted in favor of a public entity no undertaking is required. (Code Civ. Proc. § 529, subd. (b)(3).)

ANALYSIS

Petitioner argues it is entitled to a preliminary injunction based on the following:

- (1) The settlement agreement between the Department and Mandoyan which purported to reinstate Mandoyan as a Deputy Sheriff was void as the settlement agreement was not authorized by the Board of Supervisors (Board) or County Counsel;
- (2) Mandoyan could not be “reinstated” to his position as a Deputy Sheriff based on the County’s Civil Service Rules;
- (3) The Sheriff did not properly “rehire” Mandoyan based on the County’s Civil Service rules; and
- (4) The balance of harms on these facts weighs in favor of Petitioner.

FACTUAL BACKGROUND

Prior to September 14, 2016, Mandoyan worked for the Department as a Deputy Sheriff. (Pet.’s RJN Ex. 6, ¶ 1.) After a female deputy came forward with serious allegations of physical assault, stalking and harassment against Mandoyan, the Department instructed its Internal Affairs Bureau to launch a formal investigation. (Castellanos Decl., Ex. A, pp. 2-18.)

On August 15, 2016, the Department informed Mandoyan of its intent to discharge him. (Pet.’s RJN Ex. 5, ¶ 7.) The Department provided Mandoyan with the opportunity to respond to the notice of discharge at a *Skelly* hearing on September 6, 2016. (Pet.’s RJN Ex. 5, ¶ 7.) On September 14, 2016, the Department discharged Mandoyan. (Pet.’s RJN Ex. 5, ¶ 7.) Mandoyan appealed the discharge to the Civil Service Commission. (Pet.’s RJN Ex. 5, ¶ 9.) The Commission’s hearing officer conducted a five-day evidentiary hearing, heard testimony and considered other evidence. (Pet.’s RJN Ex. 6, ¶¶ 4-9; Castellanos Decl., Ex. A, p. 1.)

On January 4, 2018, the Commission’s hearing officer recommended the Commission uphold the Department’s termination of Mandoyan. (Pet.’s RJN Ex. 5, ¶ 11.) On May 23, 2018, the

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Commission issued its Final Commission Action, affirming the hearing officer's findings and recommendation.¹ (Pet.'s RJN Ex.5, ¶ 13.)

On August 13, 2018, Mandoyan filed a verified writ petition in superior court challenging the Final Commission Action. (Pet.'s RJN Ex. 5.) Shortly thereafter, on August 27, 2018, Mandoyan filed a civil complaint for damages against the County in superior court alleging various claims arising from his hearing before the Commission. (Pet.'s RJN Ex. 6.)

After his discharge from the Department, while his superior court litigation was pending, and before Alex Villanueva was elected Sheriff, Mandoyan served as Villanueva's personal driver and performed volunteer work for Villanueva's election campaign. (Pet.'s RJN Ex. 9.)

On November 26, 2018, Villanueva was declared the winner of the election for Sheriff. On December 3, 2018, Villanueva took his oath of office. (Miller Decl., Ex. A, p. 36:5-19.)

On December 28, 2018, the Sherriff authorized the Department to enter into a settlement agreement with Mandoyan. (Pet.'s RJN Ex. 7; see also Wickham Decl., Ex. A.) The settlement agreement purported to void the Final Commission Action, reinstate Mandoyan as a Deputy Sheriff, and award Mandoyan over \$200,000 in backpay. (Pet.'s RJN Ex. 7; Miller Decl., Ex. A, 359-362 [Settlement Agreement].) Neither the Board nor County Counsel executed the settlement agreement on behalf of the County.

Likelihood of Success on the Merits:

First, Petitioner contends the settlement agreement purporting to reinstate Mandoyan as a Deputy Sheriff with backpay is void.

Government Code section 23005 mandates that, "A county may exercise its powers only through the board of supervisors or through agents and officers acting under authority of the board or authority conferred by law." Under Government Code section 25303, the Board has oversight authority over all county officers.² Further the legislature has declared the Board shall "direct and control the conduct of litigation in which the county, or any public entity of which the board is the governing body, is a party." (Gov. Code § 25203.)

¹ According to the evidence, "The Department's original charges in this case indicated Mr. Mondoyan [sic] attempted to gain entry into Ms. Taylor's residence through a sliding glass door to her balcony; he used a tool/object in an attempt to pry the sliding door off its track system; he attempted to gain entry into the sliding door after Ms. Taylor repeatedly told him to leave; and he attempted to enter Ms. Taylor's bathroom window without her permission." (Vera Decl., Ex. 1, p. 7.)

² The court acknowledges Government Code section 25303 also provides that the Board's authority "shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county."

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Under the Charter of the County of Los Angeles (Charter), County Counsel is vested with "exclusive charge and control of all civil actions and proceedings in which the County or any officer thereof, is concerned or is a party." (Charter, Art. VI § 21.) The Los Angeles County Code requires the County Counsel to investigate and report to the Board concerning claims. (Los Angeles County Code § 2.14.020.)³ Any settlement where the County incurs a liability of \$20,000 or more, must be approved by the Board. (*Ibid.*)

Petitioner asserts the combination of the Government Code, Charter and County Ordinance required the Sheriff to obtain the approval of County Counsel and the Board to enter into the settlement agreement. Here, it is undisputed the Sheriff failed to obtain an express approval of the settlement agreement by County Counsel.⁴ (Wickham Decl. Ex. A.) The statements of Deputy County Counsel Elizabeth Miller and Deputy County Counsel Christopher Keosian relied upon by the Sheriff do not establish the County Counsel's consent for purposes of this motion.⁵

As noted during oral argument, Miller stated to Chief Vera and others on December 28, 2018 "that the Sheriff had the authority to settle the dispute with Mr. Mandoyan on behalf of the department, and that he could approve the settlement without involvement of County Counsel." (Vera Decl., ¶ 6.) Miller did not indicate that the County Counsel approved the settlement. In addition, Miller's statement the Sheriff "could approve the settlement without the involvement of County Counsel," is ambiguous and does not necessarily suggest County Counsel intended to relinquish its exclusive authority over the litigation to the Sheriff. Miller's entire statement suggests the Sheriff could settle the dispute "on behalf of the [D]epartment." The statement does not suggest County Counsel ultimate approval was not required to resolve the civil actions. In addition, nothing suggests the County Counsel could divest itself of its exclusive control and authority over the litigation as required by the Charter.

Further, there is no dispute the Board did not approve the settlement agreement. While the Charter provides County Counsel with "charge and control of all civil actions," the County Code requires the Board to approve a settlement where the County incurs an obligation in excess of \$20,000. (County Code § 2.14.020.) Here, the settlement agreement purports to approve a payment of more than \$200,000 to Mandoyan without Board approval. Nothing suggests the Board had any knowledge of the settlement agreement or its terms, including a \$200,000 payment as and for Mandoyan's backpay.

During argument, the Sheriff suggested because Mandoyan had challenged the Final Commission Action in superior court by administrative mandamus, Mandoyan's discipline

³ The court disagrees with Petitioner's claim County Code section 2.14.020 "requires that any settlement agreement involving the County or one of its officers must be authorized by the County Counsel." (Supplemental Brief 13:4-6.) Nothing in the section cited suggests such a requirement. During argument, Petitioner's counsel conceded the issue as to the County Code.

⁴ The Chief of the Department's Central Patrol Division solely signed the settlement agreement on behalf of the County. (Wickham Decl., Ex. A.)

⁵ The Sheriff's equitable estoppel argument is discussed *infra*.

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matter with the Department was "still open." As an open Department disciplinary matter, the Sheriff contends he had complete authority to settle the personnel matter with Mandoyan. While the Sheriff may have had that authority throughout the disciplinary process including the Commission's proceedings, there is no question once Mandoyan filed his superior court actions, the County Counsel had "exclusive charge and control of" of those "civil actions" as the County was a party. (Charter, Art. VI § 21.) Thus, County Counsel had exclusive control and authority over Mandoyan's superior court actions. The Sheriff did not have authority to unilaterally compromise the civil actions as an open disciplinary matter.⁶

As the Sheriff had no authority to enter into the settlement agreement on behalf of the County and as the Board did not approve the settlement agreement, the agreement is void. (Gov. Code § 23006. ["Any contract, authorization, allowance, payment, or liability to pay, made or attempted to be made in violation of law, is void, and shall not be the foundation or basis of a claim against the treasury of any county."]; see also *G.L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1092. ["A contract entered into by a local government without legal authority is 'wholly void,' ultra vires, and unenforceable."])

The Sheriff does not dispute the legal authority cited by the County or the County's interpretation of that law. Instead, the Sheriff briefly suggests the County is improperly interfering with the performance of his duties because the Sheriff has authority over personnel decisions such as Mandoyan's termination from the Department. The issue here, however, is not Mandoyan's termination; the County seeks a determination the Sheriff's decision to *reinstate and/or rehire* Mandoyan was legally improper.

Apparently recognizing he had neither County Counsel's approval nor the Board's to enter into a settlement agreement with Mandoyan, the Sheriff argues the County is equitably estopped from claiming the settlement agreement is void.

"Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.) Estoppel may operate against a public entity "where justice and right require it." (*Id.* at 306.) "When the evidence is not in conflict and is susceptible of only one reasonable inference, the existence of an estoppel is a question of law." (*Id.* at 305.)

The Sheriff argues the County is equitably estopped from arguing the settlement agreement is void because the Sheriff followed County Counsel's advice in entering into the settlement with Mandoyan. Specifically, the Sheriff provides evidence that prior to signing the settlement

⁶ Moreover, the Sheriff did not merely settle his own Department's personnel matter. He obligated the County to pay Mandoyan over \$200,000 in backpay. Without question, the settlement required Board approval and no one has suggested otherwise.

agreement, Vera asked Miller whether the Sheriff's Department could settle the superior court litigation filed by Mandoyan against the County. (Vera Decl. ¶ 6.) As noted earlier, according to Vera, "Miller represented that the Sheriff had the authority to settle the dispute with [] Mandoyan on behalf of the department, and that he could approve the settlement without the involvement of County Counsel." (Vera Decl. ¶ 6.) Then, at a meeting on December 21, 2018, Keosian "was asked . . . whether the procedure the [Department] was using to review Deputy Sheriff Mandoyan's termination was appropriate." (Vera Decl. ¶ 5; Murakami Decl. ¶ 8.) According to Vera and another witness who was at the meeting, Keosian responded "that the review being conducted was procedurally appropriate and that the Sheriff had the authority to undertake such a review." (Vera Decl. ¶ 5; Murakami Decl. ¶ 8.)

The Sheriff further suggests Mary Wickham, the County Counsel, understood that "efforts may be underway to, among other things, rescind [Mandoyan's] discharge and to reinstate him to the position of Deputy Sheriff." (Del Mese Decl., Ex. 1.) The Sheriff further notes that in a December 13, 2018 meeting to discuss Mandoyan's discipline review, neither Keosian nor Miller—who were both present—ever said the review was in any way improper, not permitted, or that the Department could not settle Mandoyan's superior court lawsuits.⁷ (Del Mese Decl., ¶¶ 6-7.)

The court finds the Sheriff's estoppel argument largely unpersuasive. First, unauthorized acts by the Sheriff are void. As asserted by Petitioner, estoppel may not be invoked to "directly contravene statutory limitations." (*1041 20th Street, LLC v. Santa Monica Rent Control Board* (Cal. Ct. App., July 30, 2019, No. B290242) 2019 WL 3425279 at *7.) In *1041 20th Street, LLC*, the Court found equitable estoppel could not be asserted against a rent control board to permanently exempt a property from a rent control ordinance where doing so would violate a city's charter even where the board had indicated for more than 20 years the property was exempt. (*Ibid.*) Thus, as a matter of law, estoppel cannot be used to render a statutorily void contract enforceable—estoppel is not a mechanism to override legislation. Using estoppel to bind the County to a settlement by the Sheriff which includes \$200,000 of backpay without the approval of both County Counsel and the Board would violate the Charter (Charter Art. VI § 21) and the County Code (§2.14.020).

Moreover, as to Mandoyan and any claim of estoppel, "[p]ersons dealing with a public agency are presumed to know the law with respect to any agency's authority to contract." (*Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 109; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1479. ["One who deals with the public officer stands presumptively

⁷ Del Mese's declaration specifically states: "At this December 13, 2018 meeting, Ms. Miller and Mr. Keosian explained that they had been told the County Counsel's office would not participate in the review of Deputy Sheriff Mandoyan's termination. Ms. Miller and Mr. Keosian did not represent that Sheriff Villanueva and [the Department] could not review Deputy Sheriff Mandoyan's termination or that Sheriff Villanueva and [the Department] could not settle Deputy Mandoyan's lawsuits pending against [the Department]." (Del Mese Decl., ¶ 7.)

charged with a full knowledge of that officer's powers, and is bound at his . . . peril to ascertain the extent of his . . . powers to bind the government for which he . . . is an officer, and any act of an officer to be valid must find express authority in the law or be necessarily incidental to a power expressly granted.")) Thus, Mandoyan cannot argue reasonable reliance on statements by Keosian he allegedly learned from others.⁸

The same concept of presumed knowledge applies equally to the Sheriff. Like Mandoyan, the Sheriff is presumed to know the limitations of his authority to enter into settlement agreements as well as the necessity of Board approval for settlements of \$20,000 or more. Moreover, the Sheriff had been repeatedly warned by Undersheriff Raymond Leyva the Department "couldn't hire Mandoyan back the way he wanted to do it" within the first two weeks of the Sheriff assuming office. (Miller Decl., Ex. B, p. 434-435.)

Lastly, "[e]ven where elements of an estoppel are otherwise established, the doctrine cannot be applied against a governmental entity when to do so would defeat the effective operation of a policy adopted by the Legislature to protect the public." (*Moore v. State Bd. of Control* (2003) 112 Cal.App.4th 371, 385.) The Court in *Moore* further explained "it has been held that an unauthorized promise by an employee cannot be grounds for an estoppel against his or her governmental employer where the means and limitations upon the entity's power to act are prescribed by statute." (*Moore v. State Bd. of Control, supra*, 112 Cal.App.4th at 385.)

Based on the foregoing, the Sheriff's equitable estoppel argument likely fails as a matter of law. Even if equitable estoppel were available here and the court considered the factual basis for the estoppel argument, the evidence for purposes of this motion—vague and conclusory statements made by two deputy county counsel lawyers—is unpersuasive. For example, Wickham's statement does not authorize a settlement. In fact, her email specifically asked the Sheriff to wait to take any action until *she* discussed the "matter" with the Sheriff. On December 21, 2018, Keosian said he could not give his opinion or advice on the "merits of the review." (Vera Decl., ¶ 5.) Keosian advised "the County Counsel's office would not participate in the review of Deputy Mandoyan's termination." (Del Mese Decl., ¶ 7.) Keosian said the review was "procedurally appropriate" and "the Sheriff had the authority to undertake such a review." (Vera Decl., ¶ 5.) Keosian's statements are unclear and ambiguous. As discussed earlier, the same is true of Miller's statements.

The court finds the Sheriff and Mandoyan do not dispute the County's legal position the Sheriff had no authority to enter into the settlement agreement. The Sheriff and Mandoyan's equitable estoppel claim is likely foreclosed as a matter of law. Even assuming the court could consider their equitable estoppel claim, the court finds the facts they rely on are vague,

⁸ Mandoyan bases his reliance on hearsay statements: "Because I learned that County Counsel Christopher Keosian was present at the . . . meeting, and because I was never informed that County Counsel expressed any objection to my rehiring, I had no reason to believe that County Counsel objected in any way to me being rehired. In fact, I believed that County Counsel assented to my rehiring." (Mandoyan Decl., ¶ 6.)

unspecific and largely ambiguous such that the required element of reliance is questionable. Accordingly, Petitioner has demonstrated a probability of prevailing on its claims that the settlement agreement is void.

Second, Petitioner argues the Sheriff had no authority to “reinstate” Mandoyan. The Sheriff and Mandoyan concede the Sheriff did not reinstate Mandoyan and do not attempt to justify Mandoyan’s employment with the Department as a “reinstatement.”

In Los Angeles County, Civil Service Rule 17.01.A sets forth the conditions for reinstatement after separation from County service:

“After approval by the director of personnel, any person who has been separated from county service without fault or delinquency may be reinstated by the appointing power within two years from the date of such separation, to any position held on an eligible basis prior to such separation, or to any other position to which a transfer, reassignment or voluntary reduction from that position would be authorized by these Rules.”

According to Petitioner, reinstatement can only occur under certain circumstances: if the reinstatement is approved by the Director of Personnel, the reinstatement is within two years of separation, and the underlying separation from the County was “without fault or delinquency.” (See Los Angeles County Civil Service Comm’n Rule 17.01.A.)

Failure to comply with this Rule renders the reinstatement void and ineffectual. (See *Redding v. City of Los Angeles* (1947) 81 Cal.App.2d 888, 896.)

In this case, Petitioner argues the Sheriff failed to ensure any of the required conditions were met prior to any attempted reinstatement of Mandoyan. In particular, the Department terminated Mandoyan for fault based on the Commission’s findings of abuse, harassment, stalking and dishonesty; the Department terminated Mandoyan more than two years before Mandoyan resumed employment with the Department on December 28, 2018. (Garrett Decl., ¶¶ 5-7.) Also, the Sheriff did not obtain approval from the County’s Director of Personnel to reinstate Mandoyan. (Garrett Decl., ¶¶ 5-7.)

In opposition, the Sheriff concedes Rule 17.01 does not apply to Mandoyan as the County has interpreted Rule 17.01 to apply only to employees who quit or were laid off. The Sheriff relies on an internal County memo, which he contends corroborates his position Rule 17.01 does not apply to Mandoyan’s situation. Thus, as it stands, the Sheriff argues Rule 17.01 does not apply to Mandoyan, suggesting the Sheriff need not comply with Rule 17.01 to reemploy Mandoyan. Mandoyan is in accord.

Thus, the evidence is clear and undisputed. The Sheriff did not “reinstate” Mandoyan as a Sheriff Deputy.

Since the Sheriff did not reinstate Mandoyan, in order to now be employed by the County, Mandoyan had to have been hired, or more accurately, rehired by the Department. Apparently resting on his equitable estoppel theory, the Sheriff does not address Petitioner's contention the Sheriff did not properly "rehire" Mandoyan.⁹

Here, the Charter grants authority to the Sheriff to appoint deputies under Article XII, section 51, but the Charter also limits this authority requiring deputies be appointed "from the eligible Civil service list." The Charter provisions do not conflict—the Sheriff may appoint deputies, but he may only do so from the "eligible Civil service list." Moreover, the Civil Service Rules vest the County with the exclusive right "to hire or rehire" and "to determine the methods, means and personnel by which the county's operations are to be conducted." (Los Angeles County Civil Service Comm'n Rule 1.02.) The Civil Service Rules state that civil service eligibility lists are assembled and certified by the County's Director of Personnel—not the Sheriff. (Los Angeles County Civil Service Comm'n Rule 11.01.)

Therefore, assuming there is some argument as to Mandoyan's reemployment, Petitioner notes Mandoyan was required to be on the civil service eligibility list in order to be rehired through the regular employment process. (See *Redding v. City of Los Angeles* (1947) 81 Cal.App.2d 888, 896. ["[A]ppellant having by due process of law forfeited his right to be on the police force, the chief of police is without authority to restore him. In order for him to regain membership in that organization he must pursue the route followed by any citizen who seeks to become a police officer."]; see *Holmgren v. County of Los Angeles* (2008) 159 Cal. App. 4th 593, 602. ["The only way to become a Los Angeles County civil service employee is through compliance with the procedures set out in the County's Civil Service Rules."])

In this case, the Department improperly rehired Mandoyan in violation of the County's Civil Service Rules. The Department rehired Mandoyan without Mandoyan having been placed on the eligible civil service list or going through any of the application process set forth in the Department's hiring guidelines. (Garret Supp. Decl., ¶¶ 13-14.) Thus, Mandoyan's rehire was unauthorized and not in compliance with the Civil Services Rules.

The court acknowledges the Sheriff has authority over personnel within the Department. His authority, however, is limited to those "within" the Department. If the Sheriff had no authority to reinstate or rehire Mandoyan, then Mandoyan is not properly "within" the Department. The Sheriff may not hire in violation of the County's Civil Service Rules only to argue later the Board cannot intrude on his Department's personnel decisions.

Based on the foregoing, Petitioner has demonstrated a probability of prevailing on its improper reinstatement and rehire claims undermining Mandoyan's employee status.¹⁰

⁹ Respondent Sheriff's opposition does not argue Mandoyan was "rehired."

¹⁰ To the extent Petitioner has demonstrated Mandoyan is not properly employed by the County, he has no entitlement to hold County property.

Balancing the Harms:

As the County has demonstrated a substantial likelihood of success on the merits of its claims, the court must evaluate the harm the County is likely to sustain if the preliminary injunction is denied compared to the harm the Sheriff and/or Mandoyan is likely to suffer if the injunction is issued. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.)

Petitioner argues a preliminary injunction is necessary to prevent irreparable harm to the County. Petitioner asserts Mandoyan's employment "threatens public trust in law enforcement." (Petitioner's Supplement Brief 21:12-13.) A motion before the Board expressed the harm the Board believed Mandoyan's reemployment has created:

"The reinstatement and the reason for it sends a disturbing message that a crime victim should not be believed based on the timing of the allegations and one person's doubt about his or her credibility. This approach can further discourage victims from coming forward who are already reluctant to report such crimes for a variety of reasons, including shame, self-doubt and fear. Yet, according to the National Council Against Domestic Violence, on average, nearly 20 people per minute are physically abused by an intimate partner in the United States. During one year, this equates to more than 10 million women and men."

(Mills Decl., Ex. 1, p. 1.)

Petitioner argues, "Allowing Mandoyan to hold himself out as a Deputy Sheriff, despite knowing that the County does not recognize him as an employee, could have serious consequences, and potential liability for the County." (Petitioner's Supplement Brief 21:15-17.) Petitioner asserts the Sheriff's decision to place Mandoyan in a "non-public role" within the Department does not eliminate the harm suffered by the County. Petitioner suggests allowing employees who were discharged for misconduct to return to the Department creates "daily pushback" and questioning by the public. (Reply 13:8-10.) The Sheriff's actions, according to Petitioner, "undermine both County law and the County's disciplinary process." (Reply 13:11.)

In opposition, the Sheriff argues any harm resulting from Mandoyan working as a Deputy Sheriff is purely speculative given his "non-public role" not involving patrol duty. (Villanueva Decl., ¶ 4; Mandoyan Decl., ¶ 11.) Moreover, the Sheriff represents he intends to keep Mandoyan on a similar assignment and off active patrol until the resolution of this matter. (Villanueva Decl., ¶ 5.)

The court acknowledges the Sheriff has reduced the extent of the harm suffered by Petitioner through Mandoyan's non-public role within the Department. The court agrees, however, that even assigning Mandoyan to a non-public role, the Department having previously discharged Mandoyan from his position of public trust and not having followed applicable Civil Service Rules to reemploy him, is harmful to the Sheriff's Department as an institution and a danger to the public.

As to harm that will be suffered by the Department if the injunction is granted, the Sheriff identifies none in his opposition brief. At argument, the Sheriff suggested granting the injunction would leave the Sheriff with one less deputy in the Department. The Sheriff also argue the termination of an active Deputy Sheriff would directly contradict his constitutional authority.¹¹ Given that the Sheriff relies on the enforceability of the settlement agreement to validate his actions with Mandoyan based on consent or equitable estoppel and at the same time essentially concedes his lack of statutory authority to enter it, his claim of harm based on his constitutional authority rings hollow. As noted earlier, based on Petitioner's showing, Mandoyan is not personnel "within" the Department.

Mandoyan argues an injunction will result in severe economic harm to him and prevent him from paying his mortgage. Despite submitting a declaration on his own behalf in opposition to the injunction, he submits no evidence in support of this representation or any other harm. Thus, any claim of financial harm by Mandoyan is completely unsupported by the evidence. Mandoyan's declaration makes no mention of harm.

Petitioner has demonstrated the harm it will suffer if the injunction is not granted. Mandoyan has presented no evidence of harm if the injunction is granted. The Sheriff's evidence of harm is minimal and unsupported by the showing he has made on the merits.

Accordingly, balancing the harms, the court finds Petitioner has demonstrated significant irreparable harm and that the harm overwhelmingly weighs in Petitioner's favor.

Nature of the Injunction:

The Sheriff argues Petitioner's injunction seeks to overturn the status quo, subjecting the injunction to the heightened requirements of a mandatory injunction. According to the Sheriff, the status quo is Mandoyan working as a Deputy Sheriff. (Ex Parte Opposition, Villanueva Decl., ¶ 4.)

Petitioner disagrees arguing the relief sought is a prohibitory injunction. As characterized by Petitioner, it "seeks an injunction requiring that Mandoyan cease holding himself out as a Deputy Sheriff and relinquish the County property in his possession, and that Villanueva cease to recognize or hold Mandoyan out as a Deputy Sheriff. In other words, the County seeks injunctive relief requiring Respondents to comply with the law." (Reply 11:13-17.)

¹¹ The court disagrees with the Sheriff that Attorney General Opinion 93-903 informs on the issue. The opinion (concerning general law counties) does not provide the Sheriff has unfettered hiring authority. In fact, the opinion states the Board has the power to prescribe the appointment of employees. That the Sheriff is required to appoint individuals whom the County has placed on an eligible civil service list does not run afoul of his authority.

The nature of the injunction is important as “[a] preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal.” [Citation.]” (*Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493.) To warrant granting a mandatory injunction, the right to such an injunction must be “clearly established” and “irreparable injury” must flow from the refusal to grant it. (*Davenport v. Blue Cross* (1997) 52 Cal.App.4th 435, 448.)

“[T]he general rule is that an injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties.” (*Davenport v. Blue Cross of California, supra*, 52 Cal.App.4th at 446.) Requiring a party to take affirmative steps, however, does not automatically render a injunction mandatory. (See e.g., *People v. Hill* (1977) 66 Cal. App. 3d 320, 322-323, 331 [“Although appellant, under the injunction, is required to take affirmative action to remove words from his advertising, it . . . does not change the injunction from prohibitory to mandatory.”].)

“An injunction designed to preserve the status quo as between the parties and to restrain illegal conduct is prohibitory, not mandatory. . . .” (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1048.) In the context of injunctions, the status quo is “ ‘the last actual peaceable, uncontested status which preceded the pending controversy.’ ” (*United Railroads v. Superior Court* (1916) 172 Cal. 80, 87; see *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1985) 165 Cal.App.3d 429, 440.)

Here, it is arguable that the status quo—the last peaceable, uncontested status of the parties which preceded the controversy—is a state of affairs where Mandoyan was *not* employed and performing work as a Deputy Sheriff. Wickham requested the Sheriff not proceed with any effort to employ Mandoyan without discussing the issue with her. Leyva warned the Sheriff he could not proceed as he did when he hired Mandoyan. The Sheriff nonetheless proceeded and this lawsuit ensued. Thus, Petitioner’s injunction arguably seeks a return to the status quo by requiring Mandoyan cease operating under his highly contested status as a Deputy Sheriff.¹²

The court is persuaded the Sheriff is correct—Petitioner is seeking a mandatory injunction here. Even though mandatory injunctions are rarely granted, such an injunction is warranted here. Petitioner has clearly established its entitlement to the injunction. It is undisputed the Sheriff had no legal authority to enter into the settlement agreement with Mandoyan on behalf of the County. The Sheriff’s evidence the County Counsel authorized the Sheriff to enter into the settlement agreement on this record is vague and ambiguous. Such evidence also does not speak to the Board’s approval of a settlement obligating the County to a \$200,000 payment for backpay.¹³ It is undisputed Mandoyan did not qualify for reinstatement. It is also undisputed

¹² It seems to the court, however phrased, Petitioner’s request Mandoyan be required to return his uniform, gun and badge is a mandatory injunction.

¹³ During argument, the Sheriff suggested the County’s writ petition did not raise the impropriety of the settlement agreement’s provision to pay Mandoyan \$200,000 as the reason for the County’s petition. The petition, however, does raise the issue. (See, e.g., Petition ¶¶ 92, 99 and 100.)

when the Department rehired Mandoyan it did so in violation of applicable Civil Service Rules. Petitioner also demonstrated the Sheriff's justification for all of his actions with Mandoyan—the enforceability of the settlement agreement—is either not tenable as a matter of law or unavailable on the facts as shown today.

Additionally, Petitioner established irreparable injury. The Department discharged Mandoyan for wrongdoing. The County provided Mandoyan with all of his rights under the Civil Service Rules, including an evidentiary hearing. The Commission upheld Mandoyan's termination. As argued by Petitioner, the Sheriff's decision to overturn Mandoyan's discharge substantially erodes public trust and confidence in the County's law enforcement agency. It also undermines the County's employment and discipline systems and creates confusion with employees and the public.

While this court recognizes the rarity of a mandatory preliminary injunction, on Petitioner's showing, such an injunction is warranted here.

CONCLUSION

For the foregoing reasons, Petitioner's request for preliminary injunction is GRANTED. No undertaking is required.

The Sheriff's request for a stay is denied. The court has signed Petitioner's proposed order this date.

The Sheriff's request Mandoyan be placed on administrative leave is denied based on Petitioner's showing on the merit as well as the harm. It seems to the court an injunction placing Mandoyan on administrative leave without pay does not address the irreparable harm claimed by Petitioner.

Petitioner's Request for Judicial Notice is granted except as to Exhibit 9.

Petitioner's Evidentiary Objections:

Mandoyan Declaration: Overruled – 1, 3, 6-11; Sustained – 4; Sustained in part – 2 (as to first sentence), 5 (as to first phrase through "meeting")

Vera Declaration: All overruled

Del Mese Declaration: Overruled – 3 and 4; Sustained in part – 1 (as to last sentence), 2 (as to what the email said)

Mills Declaration: All overruled

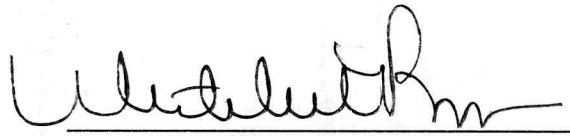
Murakami Declaration: All overruled except 1 which is sustained

Bernstein Declaration: All sustained except 1 which is overruled

Villanueva Declaration: All overruled

IT IS SO ORDERED.

August 19, 2019

A handwritten signature in black ink, appearing to read 'Mitchell Beckloff', written over a horizontal line.

Hon. Mitchell Beckloff
Judge of the Superior Court

08/20/2019